85-1641

No. .....

Supreme Court, U.S.
FILED
APR 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1985

LINDA MULLIGAN,

Petitioner,

v.

FRANCIS HAZARD, KENT SCHWIRIAN, S. EARL BROWN, JOHN T. MOUNT, W. ANN REYNOLDS, KATHRYN T. SCHOEN, DOROTHY W. JACKSON, DIETHER H. HAENICKE, JOHN D. JACOB, AND THE OHIO STATE UNIVERSITY BOARD OF TRUSTEES,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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APPENDIX

TABLE OF CONTENTS

	Page[1]	Page[2]
United States Court of Appeals Decision Decided and Filed November 26, 1985	1	A-1-10
District Court Judgment	12	A-11
District Court's Memorandum and Order Filed May 15, 1984	13	A-12-17
District Court's Memorandum and Order Filed June 14, 1984	19	A-18-19
United States Court of Appeals Judgment Filed November 26, 1985	20	A-20
United States Court of Appeals Order Denying Petition For Rehearing and Rehearing *En Banc* Filed January 7, 1986	21	A-21
United States Constitution, Amendments 1, 5, and 14	22	A-22
42 U.S.C. Section 1983	23	A-23
42 U.S.C. Section 1985	24	A-24-25
Ohio Revised Code Section 2305.06	26	A-26
Ohio Revised Code Section 2305.07	26	A-27
Ohio Revised Code Section 2305.09	27	A-28
Ohio Revised Code Section 2305.10	27	A-29
Ohio Revised Code Section 2305.10 (as amended 5-31-84)	28	A-29
Ohio Revised Code Section 2305.11	29	A-30-31
Ohio Revised Code Section 2305.11 (as amended 9-26-84)	31	A-32
Ohio Revised Code Sections 2305.11.1 and 2305.111	34	A-33
Ohio Revised Code Section 2305.14	34	A-34

TABLE OF CONTENTS—Continued

Rules Of The University Faculty Section 3335-3-35(B)(10)	35	A-35
Rules Of The University Faculty Section 3335-5-01	35	A-36
Rules Of The University Faculty Section 3335-5-03	37	A-37

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[1]Page numbers in this column refer to pages in this appendix.

[2]Page numbers in this column refer to pages in the original appendix, as cited in the Petition. These page numbers are inserted in the text of this appendix in bold print.

The Petition for Writ of Certiorari, which was filed under separate cover, refers to pages in the following Appendix. Those page references refer to the original Appendix copy which was reproduced, submitted and rejected because of incorrect type size. The Appendix page numbers will consequently change because they are now being printed. To make the Petition's reference to the Appendix accurate, the page numbers of the original reproduced Appendix will be noted as A-1, A-2, etc., in bold type.

(A-1) No. 84-3555

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LINDA MULLIGAN, *Plaintiff-Appellant,*	)	On Appeal from the United States District Court for the Southern District of Ohio, Eastern Division.
v.	)	
FRANCIS HAZARD, et al., *Defendants-Appellees.*	)	

Decided and Filed November 26, 1985

Before CONTIE and MILBURN, Circuit Judges, and WEICK, Senior Circuit Judge.

WEICK, Senior Circuit Judge. Plaintiff-appellant Linda Mulligan appeals from a summary judgment granted in favor of defendants-appellees, Ohio State University Board of Trustees and several of the University's administrators. Mulligan brought her action in the district court, pursuant to 42 U.S.C. §§ 1983 and 1985, alleging that defendants unconstitutionally restricted her tenure rights as a faculty member of the University, in violation of the Fourteenth Amendment's due process clause as well as the First and Fifth Amendments, by amending the University's tenure policy in 1975 to provide for campus-specific tenure in place of the then prevailing policy of according tenure on a university-wide basis. For the reasons hereinafter stated, we **(A-2)** conclude that Mulligan's action is barred by the statute of limitations and we, therefore, affirm the district court's grant of summary judgment.

I.

Mulligan began her employment with Ohio State University in 1973 when she was hired as a visiting assistant professor with assignment to the branch campus at Marion. At the time of her hiring, Mulligan signed a Notice of Appointment (NOA) which provided the terms of her employment. Besides detailing her appointment as a visiting professor at Marion, the NOA stated that "the By-Laws of the Board of Trustees . . . . the Rules for the University Faculty and . . . the Official Actions of the Board of Trustees are expressly incorporated herein. . . ." The Rules of the University Faculty provided, at this time, that an appointment as a professor did not contain any commitment by the Trustees that the appointee would

be given tenure or that he would be reappointed at the conclusion of the term. In his letter offering Mulligan employment at Marion, Dr. Edward McDonagh, the chairman of the University's sociology department, elaborated on the University's tenure policy. He indicated that tenure was generally granted when the faculty member was reappointed for his or her eighth year but that it was sometimes granted earlier if the faculty member had already received a promotion to the position of associate professor. Dr. McDonagh did not promise Mulligan, in his letter, that she would receive tenure or reappointment.

At the beginning of the 1973 fall semester, Mulligan was offered and accepted an appointment as a regular non-visiting assistant professor. Again, the NOA which she signed stated that she would be assigned to the Marion campus and that the relevant by-laws and university rules were incorporated by reference. This appointment was renewed in each of the subsequent years and Mulligan accepted her reappointments by signing further NOAs. At all times, Mulligan was assigned to the Marion campus.

(A-3) At a meeting of the Board of Trustees, on September 5, 1975, a resolution was passed to amend the rules regarding tenure. Previously, a tenured faculty member held that status throughout the university system, *i.e.*, at the main campus in Columbus and at the various regional campuses. The September 5th resolution, which was subsequently incorporated into the University Faculty Handbook, declared that, from that date forth, faculty members who received tenure would only hold tenure at the particular campus where they rendered their primary service. On February 1, 1980, the Board of Trustees passed a resolution stating that those faculty members who rendered

their primary service at the regional campuses would be designated as members of a "regional campus faculty."

Mulligan continued to teach at the Marion campus after the 1975 tenure change. She signed a new NOA each year from 1975 through at least 1982.[1] Each of these NOAS contained a provision which made her employment subject "to the rules and regulations and personnel policies of the Board of Trustees." In 1979, Mulligan was awarded tenure and given a promotion to the position of associate professor.

Mulligan requested a transfer to the Columbus campus in 1980. Her request was denied. She then wrote several letters to various University administrators complaining about the alleged "second class citizenship" of the regional campus faculty and their underrepesentation on the various university faculty committees. Defendant Kent Schwirian, then chairman of the sociology department, wrote back to Mulligan denying her charges. In this letter, Schwirian criticized Mulligan for making accusations about him to the Provost instead of confronting him directly. Defendant Provost Ann Reynolds also wrote to Mulligan and criticized her for not first seeking to resolve her grievances within her department prior to contacting the Provost's **(A-4)** office. Both Schwirian's and Reynolds' letters were circulated among several of the University's administrators. After receiving a complaint from one of Mulligan's students about her action in changing the scheduled meeting times of her classes, defendant Dean Francis

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[1]Mulligan is presently a member of the Marion faculty. While the record only contains the NOAs which she signed through 1982, presumably she continued to sign NOAs or similar contractual agreements after 1982 as well.

Hazard wrote to Mulligan, on April 8, 1983, and advised her that her action violated university rules. A copy of Hazard's letter was placed in Mulligan's personnel file.

Mulligan filed this present action with the district court in October 1983. In her complaint, brought pursuant to 42 U.S.C. §§ 1983 and 1985. Mulligan alleged that her Fourteenth Amendment due process rights had been abridged by the defendants' actions. Specifically, Mulligan contended that she had been assured by the chairman of the sociology department, when she was initially hired in 1973, that her rights and privileges as a faculty member in the sociology department at the Marion campus would be essentially the same as those for a faculty member teaching at the Columbus campus. She further alleged that the Board of Trustees failed to give the university faculty notice or an opportunity for a hearing prior to its adoption of the 1975 change in the tenure rules. The tenure change, Mulligan contended, substantially changed her contract and diminished the value of her expected tenure. Mulligan added pendant state law claims for breach of contract and tortious interference with Mulligan's contract rights. In her prayer for relief, she sought an injunction as well as compensatory and punitive damages. Specifically, Mulligan requested an order which would require the defendants to grant her university-wide tenure and to integrate her in all aspects of the operation and academic life of the University's sociology department.

The defendants motioned the district court for summary judgment. On May 15, 1984, the court granted their motion. In his accompanying memorandum of law, District Judge Duncan ruled that Mulligan did not have a property interest in the retention of the pre-1975 tenure

system. Judge Duncan based his holding on the fact that the Board of Trustees had changed **(A-5)** the tenure rule in 1975 while Mulligan did not receive tenure until 1979. Judge Duncan further held that the institution of campus-specific tenure did not deny Mulligan a protected liberty interest. Thus finding no merit to Mulligan's federal claims. Judge Duncan declined to entertain her pendent state claims.

Mulligan's motion for reconsideration was rejected by an order of Judge Duncan issued June 14, 1984. On July 12, 1984, Mulligan filed her appeal from both orders to this court.

II.

As an initial matter, we must determine whether Mulligan's action is barred by the statute of limitations.[2] Congress did not establish a statute of limitations for actions brought under 42 U.S.C. §§ 1983 and/or 1985. The courts, consistent with the mandate of 42 U.S.C. § 1988,[3] have

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[2]Though not discussed by the district court in its memorandum granting defendants' motion for summary judgment, the issue of the statute of limitations was raised by defendants in their brief in support of their motion. Therefore, the issue is properly before this court.

[3]42 U.S.C. § 1988 states, in relevant part:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of [the civil rights statutes] . . . shall be exercised and enforced in conformity with the laws of the United States . . . ; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause. . . .

turned to the analogous state statutes of limitations. *Board of Regents v. Tomanio*, 446 U.S. 478, 483-4 (1980). The Supreme Court has recently held that, as a matter of law, § 1983 actions should be characterized as personal injury actions for the purpose of determining the applicable statute of limitations. *Wilson v. Garcia*, — U.S. — 105 S.Ct. 1938 (1985). In so ruling, the Court rejected the use **(A-6)** of other arguably analogous statutes of limitations, such as those for breach of contract actions, tort claims for damages to property, tortious acts committed by public officials or the states' catchall period of limitations. *Id.* at 1948-9.

Depending upon the nature of the personal injury, there are two different Ohio statutes of limitations which could apply to the action. First, an action to recover for bodily injury must be brought within two years after the cause arose. Ohio Rev. Code § 2305.10. Second, an action for libel, slander, assault, battery, malicious prosecution, false imprisonment or malpractice will be barred if not brought within one year after the cause accrued. Ohio Rev. Code § 2305.11.[4] Before discussing which of these

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[4]Arguably, Ohio Rev. Code § 2305.09(D) (action for injury to the rights of the plaintiff not arising on contract nor enumerated in §§ 2305.10 to 2305.12, inclusive, §§ 2305.14 and 1304.29) is also applicable to personal injury actions. However, § 2305.09(D) is more in the nature of a catch-all statute of limitations, as compared to §§ 2305.10 and 2305.11, and is, therefore, inapplicable to federal civil rights actions brought under 42 U.S.C. §§ 1983 and 1985. *Wilson v. Garcia*, — U.S. —, 105 S.Ct. at 1948.

Recently, the Ohio legislature amended § 2305.11 and removed assault and battery actions from its scope. The legislature concurrently enacted a new statute, Ohio Rev. Code

(Continued on following page)

statutes is applicable, however, we must first determine whether the holding of *Wilson v. Garcia* should be applied retroactively to the instant case.

The Supreme Court did not address the issue of whether the holding of *Wilson v Garcia* should be applied retroactively to cases already filed but not decided prior to *Wilson*. However, the Court itself, applied its holding retroactively in the *Wilson* case by upholding the U.S. Court of Appeals' decision to apply New Mexico's statute of limitations for personal injury actions in lieu of another statute which the New Mexico Supreme Court **(A-7)** had earlier held was applicable to a factually similar § 1983 action and which would have barred the plaintiff from prosecuting the lawsuit.[5] *Wilson* is similar to the Supreme Court's recent decision in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), where the Court's holding on the applicability of a statute of limitations was applied retroactively to the case at hand even though the Court did not expressly discuss whether its decision should, in fact, be given retroactive effect. By so doing, the Court in *DelCostello* was impliedly holding that

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(Continued from previous page)

§ 2305.111, which provides for a one year limitations period for assault and battery actions. Since § 2305.11 had previously provided a one year limitations period for such actions, the amendment and enactment of new section 2305.111 effects no change in the limitations period. For purposes of our discussion, we will refer to § 2305.11, as it read prior to the amendment, since it was in effect at the time the lawsuit was filed.

[5]In *DeVargas v. New Mexico*, 97 N.M. 563, 642 P.2d 166 (1982), the New Mexico Supreme Court ruled that the plaintiff's § 1983 action was barred by the two year statute of limitations contained in § 41-4-15(A) of the New Mexico Tort Claims Act.

the statute of limitations should be applied retroactively. *Smith v. General Motors Corp.*, 747 F.2d 372, 375 (6th Cir. 1984) (*en banc*).[6] *Welyczco v. U.S. Air Inc.*, 733 F.2d 239 (2d. Cir.), *cert. denied*, — U.S. —, 105 S.Ct. 512 (1984). *See also Gray v. Amalgamated Meat Cutters Local 540*, 736 F.2d 1055 (5th Cir. 1984). *Cf. Zemonick v. Consolidation Coal Co.*, 762 F.2d 381, 384-5 (4th Cir. 1985) (refused to give retroactive effect to *DelCostello*). Similarly, *Wilson* implicitly mandates that its holding be applied retroactively.

As noted above, Ohio has two statutes of limitations which relate to personal injury actions. Ohio Rev. Code §§ 2305.10 and 2305.11. In our opinion, § 2305.11 is the more appropriate of the two statutes of limitations for actions arising under the civil rights statutes. As the Supreme Court noted in *Wilson*, Congress enacted the Civil Rights Act of 1871 in order to com- **(A-8)** bat the violence that was being perpetuated by the Ku Klux Klan and other organizations against the newly emancipated slaves.[7] The concern of Congress, thus, was with perpe-

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[6]As Judge Martin explained:

> If the Supreme Court had not intended for *DelCostello* to apply retroatively, the Court easily could have reserved the issue or could have applied the statute of limitations prospectively, as it did in *Chevron* [*Oil Co. v. Huson*, 404 U.S. 97 (1971)]. By applying the statute of limitations to extinguish the claim in the case before the Court, we feel the Supreme Court demonstrated its intent to apply *Del Costello* retroactively.

Smith v. General Motors Corp., 747 F.2d 372, 375 (6th Cir. 1984) (*en banc*).

[7]In discussing the historical impetus for the enactment of the civil rights statutes, the Court stated:

(Continued on following page)

tuators of intentional tortious conduct. While both §§ 2305.10 and 2305.11 theoretically encompass intentional tort actions. § 2305.11, which applies to actions involving assaults, batteries and the like, more specifically encompasses the sorts of actions which concerned Congress as it enacted the civil rights statutes. Accordingly, we hold that the one year limitations period contained in § 2305.11 governs Mulligan's actions.

Mulligan's cause of action accrued in 1975 when the Board of Trustees changed the University's tenure policy. Since Mulligan's action was brought in 1983, which is eight years after the Board's action, it is time barred by the statute. Even if we were to accept Mulligan's contention that the cause accrued in 1980, when she allegedly first became aware of the tenure change,[8] her action is still, none-

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> The specific historical catalyst for the Civil Rights Act of 1871 was the campaign of violence and deception in the South, fomented by the Ku Klux Klan, which was denying citizens their civil and political rights [citation omitted]. The debates on the Act chronicle the alarming insecurity of life, liberty and property in the Southern States, and the refuge that local authorities extended to the authors of these outrageous incidents. [quotation omitted] By providing a remedy for the violation of constitutional rights. Congress hoped to restore peace and justice to the region through the subtle power of civil enforcement.

Wilson v. Garcia, — U.S. —, 105 S.Ct. 1938, 1947 (1985).

[8]This contention is untenable. The Board's 1975 action was published in the Rules of the University Faculty that very same year and has continued in effect since then. The NOAs, which Mulligan signed every year from 1975 through at least 1982, specifically incorporated these rules. Therefore, Mulligan had notice of the rule since its inception. Further, Mulligan has alleged no specific misstatement or falsehood by any university official which could have caused her to believe that the 1975 tenure change was not in effect.

theless, time barred. Thus, regardless of the merits of her claim, she is barred from bringing it at this late date.

(A-9) The only portion of this action which is not time barred is Mulligan's claim relating to defendant Hazard's April 8, 1983 letter. Mulligan contends that this letter, which was placed in her personnel file, violated a protected liberty, interest by "stigmatizing" her in any future job searches. She argues that since her file would likely be given to her prospective employers she would be harmed by the allegedly inaccurate accusations contained in Hazard's letter.

A determination regarding whether the April 8, 1983 letter deprived Mulligan of her alleged liberty interest in an accurate personnel file requires consideration of the letter in the context of her entire file, including the letters of August 24, 1981 and October 23, 1980 which Mulligan is barred from challenging. The October 23, 1980 memorandum from Assistant Dean C. Leslie Carpenter to Dean Francis Hazard indicated that Mulligan had unilaterally cancelled her scheduled classes for Sociology 101. Carpenter indicated that the change was unfair to the students and that "this matter only creates further doubt about her attitude toward and commitment to her teaching duties in Marion." Hazard indicated agreement. The August 24, 1981 letter to Mulligan from Kent Schwirian chairman of the Sociology Department, indicated that Mulligan violated the "normal channels of communication" in complaining about several matters. The letter of April 8, 1983 to Mulligan from Hazard charged Mulligan with failure to comply with University policy with respect to the scheduling of classes and accused her of persistent violation of the policy.

In light of material already present in Mulligan's file, especially the October 1980 memorandum, it is clear that the letter of April 8, 1983 is merely cumulative, and, regardless of whether Mulligan could establish a constitutionally protected liberty interest in the accuracy of her file,[9] the April 1983 letter alone effects no deprivation of that interest. *Lake Michigan Col-* **(A-10)** *lege Federation of Teachers v. Lake Michigan Community College,* 518 F.2d 1091, 1096-97 (6th Cir. 1975), *cert. denied,* 427 U.S. 904 (1976).

Accordingly, the judgment of the district court is AFFIRMED.

(A-11) JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT

District
Southern District of Ohio Eastern Division

Docket Number
C-2-83-1984

Name of Judge or Magistrate

Judge Robert M. Duncan

Case Title

Linda Mulligan

V.

Francis E. Hazard, et al.

☐ Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding.

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[9]*Kendall v. Board of Education of Memphis,* 627 F.2d 1, 5 (6th Cir. 1980).

The issues have been tried and the jury has rendered its verdict.

(X) Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

defendant's motion for Summary Judgment is GRANTED, JUDGMENT is entered for the defendants against the plaintiff.

Clerk

Kenneth J. Murphy

(By) Deputy Clerk

/s/ Bev Robinson

Date

May 15, 1984

(A-12) IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C-2-83-1984

Linda Mulligan,

Plaintiff

v.

Francis E. Hazard, et al.,

Defendants

MEMORANDUM AND ORDER

This action is brought pursuant to 42 U.S.C. § 1983 and § 1985 to redress alleged violations of plaintiff's Fourteenth Amendment due process rights. Plaintiff also seeks

to recover on pendent state claims for breach of contract and tortious interference with a contractual relationship. The defendants have moved for summary judgment. This matter is presently before the Court on that motion.

I

Plaintiff was first employed by Ohio State University in October 1973 as an assistant professor of sociology. Plaintiff's contract of employment with the University consists of a series of notices of appointment for each year of employment. (See Defendants' Exhibits A-P.) The Rules and Regulations of the University and the Faculty Handbook were incorporated into and made part of plaintiff's employment contract.

(A-13) At the time of plaintiff's original appointment, and continuing to the present time, plaintiff was assigned to teach at the Marion campus. In 1979, plaintiff became an associate professor of sociology with tenure.

Plaintiff's claims of a denial of constitutional and contractual rights revolve around the defendants' decision in 1975 to revise the Faculty Handbook. More specifically, the Handbook, which is incorporated into every faculty member's employment contract, was revised in 1975 so as to make tenure campus-specific. In other words, after 1975 faculty members were entitled to receive tenure only at the campus at which they taught and were assigned. It is undisputed that in 1975 plaintiff signed a revised notice of appointment which incorporated the revised Faculty Handbook provision making tenure campus-specific. It is further undisputed that plaintiff did not receive tenure

until 1979 sometime after the revised Handbook was made part of her employment contract.

The defendants in this case are all employed in some form or another by Ohio State University. It is unclear what, if any, role each of the defendants played in revising the Faculty Handbook and in abiding by the terms of that revised Handbook. Defendant Schwirian is the Chairman of the Department of Sociology; defendant Hazard is the Dean of the Marion campus; defendant Reynolds and defendant Haenicke are the former and present Provost; defendant Schoen and defendant Jackson are affiliated with the Provost's Office; defendant Brown is the Dean of the College of Social and Behavioral Sciences; defendant Mount **(A-14)** is Vice President of Regional Campuses; and defendant Jacob is Chairman of The Ohio State University Board of Trustees.

Plaintiff sets forth a number of claims in her complaint, the most important of which is a denial of property and liberty without due process of law. The plaintiff bases her due process claim on the defendants' unilateral act of revising the Faculty Handbook in 1975. Plaintiff further alleges that the revision of the Faculty Handbook deprived her of tenure and contract rights under state law and amounts to a tortious interference with her contract rights. The Court hereinafter considers each of the plaintiff's claims and the alleged basis for dismissal of those claims.

II

As defendants correctly note, in order for plaintiff to recover in this case, it is first necessary for plaintiff to establish an interest or right deserving of protection under the Fourteenth Amendment.

The types of property interests protected by the Fourteenth Amendment are varied. In the context of the academic world, the Supreme Court has acknowledged that actions on the part of a university which give rise to an expectancy may result in finding a protected property interest. However, unilateral expectations which have no basis in statute, contract or a mutually explicit understanding are clearly not protected. *Board of Regents v. Roth*, 408 U.S. 564 (1972); *Perry v. Sindermann*, 408 **(A-15)** U.S. 593 (1972). *See also McElearney v. University of Illinois*, 612 F.2d 285 (7th Cir. 1979).

While the plaintiff correctly notes that informal policies or understanding, even in the face of formal policies and rules, may give rise to an expectancy, it is clear that what is required is some conduct or assurance by a university official. *See Jago v. Van Curen*, 454 U.S. 14 (1981); *Soni v. Board of Trustees of the University of Tennessee*, 513 F.2d 347 (6th Cir. 1975), *cert. denied*, 426 U.S. 919 (1976); *Harris v. Arizona Board of Regents*, 528 F. Supp. 987 (D. Ariz. 1981).

In the present case, plaintiff argues that under the first contract she signed with the University in 1973 tenure was not campus-specific. Therefore, plaintiff contends that prior to making tenure campus-specific by virtue of a revision of the Faculty Handbook in 1975, plaintiff was entitled to notice and an opportunity to be heard. Apparently, plaintiff is asserting a property interest in tenure which is not limited to a specific campus. Or stated another way, plaintiff is alleging a property interest in continuing to be employed under precisely the same terms and conditions which were found in plaintiff's original 1973 one-year employment contract.

The Court finds no merit to plaintiff's contention that she had a property interest in not having tenure made campus-specific. The Court has carefully reviewed all of the relevant University rules and Faculty Handbooks. None of those documents contain any language which could reasonably be interpreted as allowing faculty members to receive University-wide tenure after **(A-16)** a certain period of time regardless of where they performed their teaching duties. Moreover, the absence of a provision until 1975 making tenure campus-specific cannot in and of itself be deemed to create an expectancy of University-wide tenure. Finally, plaintiff has pointed to no statements or actions of University personnel which could be viewed as creating a reasonable expectation that tenure, when and if received, would be University-wide.

Plaintiff also contends that the defendants' alteration of the Faculty Handbook in 1975 so as to make tenure campus-specific operated to deny plaintiff liberty to practice her profession without due process. The Court finds no merit to these allegations. *Paul v. Davis*, 424 U.S. 693 (1975) makes abundantly clear that damage to reputation, absent loss of career opportunity, does not amount to a deprivation of liberty. In order to state a claim for deprivation of liberty, therefore, the plaintiff must show both a "stigma" resulting from defendants' actions and a loss of employment opportunity. *See also Kendall v. Board of Education*, 627 F.2d 1 (6th Cir. 1980); *Weathers v. West Yuma County School District*, 530 F.2d 1335 (10th Cir. 1976).

It is not disputed that when plaintiff was awarded tenure in 1979, the 1975 Faculty Handbook making tenure

campus-specific was in effect. The plaintiff claims that failure to make her tenure University-wide stigmatized plaintiff. However, plaintiff fails to identify with any degree of specificity, the way in which her good name, reputation or integrity were damaged. Moreover, there is absolutely no evidence in the record of **(A-17)** plaintiff being foreclosed from any professional opportunities as a result of the defendants' actions.

Viewing all matters of record in a light most favorable to the plaintiff, the Court simply finds no facts from which a denial of constitutional rights could be inferred. Accordingly, defendants' motion for summary judgment is well taken and is GRANTED.

Having found that plaintiff has no liberty or property interest or right deserving of protection under the Fourteenth Amendment, the Court is not required to determine what process was due plaintiff. Moreover, having dismissed plaintiff's federal claims, the Court, in the exercise of its sound discretion, may refuse to entertain plaintiff's pendent state claims. *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

III

In conclusion, the defendants' motion for summary judgment is well taken in all respects. The Clerk of Court is DIRECTED to enter JUDGMENT for the defendants and against the plaintiff.

So ORDERED.

/s/ Robert M. Duncan
Robert M. Duncan, Judge
United States District Court

(A-18) IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C-2-83-1984

Linda W. Mulligan,

Plaintiff,

v.

Francis E. Hazard, et al.,

Defendants.

June 15, 1984

Kenneth Murphy, Clerk
(Filed June 14, 1984)

U.S. District Court, Southern Dist. Ohio
East Div., Columbus

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for reconsideration of this Court's May 15, 1984 order granting defendants' motion for summary judgment. Plaintiff also requests oral argument. The Court has carefully reviewed all matters of record in this case and has reflected on the arguments made by counsel at a prior oral hearing. No additional arguments are needed for the Court to decide the matters which are pending.

The Court does not believe that plaintiff has presented any additional facts which would warrant this Court in reconsidering its prior order granting defendants' motion for summary judgment. The Court does not want to appear unsympathetic to plaintiff's concerns. Nonetheless, not every possible grievance against the State or its officers is capable of redress in federal court in a § 1983 action.

(A-19) In sum, the Court finds no basis for reconsidering its prior order of May 15, 1984. Plaintiff's motion for reconsideration is hereby DENIED.

So ORDERED.

/s/ Robert M. Duncan, Judge
United States District Court

(A-20) UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 84-3555

LINDA MULLIGAN,

Plaintiff-Appellant,

v.

FRANCIS E. HAZARD, et al.,

Defendants-Appellees.

Before: CONTIE and MILBURN, Circuit Judges; and WEICK, Senior Circuit Judge.

JUDGMENT

(Filed November 26, 1985)
John P. Hehman, Clerk

ON APPEAL from the United States District Court for the Southern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment

of the said District Court in this case be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court, if necessary.

ENTERED BY ORDER OF
THE COURT

/s/ John P. Hehman, Clerk

Issued as Mandate: January 16, 1986 A True Copy.

COSTS: None

Filing fee .....$ Attest:

Printing .....$ /s/ Gary McCarthy

Deputy Clerk

Total.....$

(A-21) No. 84-3555

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LINDA MULLIGAN,

Plaintiff-Appellant,

v.

FRANCES E. HAZARD, ET AL.,

Defendants-Appellees.

ORDER

(Filed January 7, 1986)
John P. Hehman, Clerk

Before: CONTIE and MILBURN, Circuit Judges, and WEICK, Senior Circuit Judge.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER
OF THE COURT
/s/ John P. Hehman, Clerk

(A-22) The Constitution Of The United States

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person

be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(A-23) 42 U.S.C. Section 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

(R. S. § 1979.)

(A-24) 42 U.S.C. Section 1985

§ 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duty. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to

any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce the right of any person, or class of persons, to the equal protection of the laws;

(A-25)

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned

by such injury or deprivation, against any one or more of the conspirators.

(R. S. § 1980.)

(A-26) Ohio Revised Code

[CONTRACTS]

§ 2305.06 Contract in writing.

Except as provided in section 1302.96 of the Revised Code, an action upon a specialty or an agreement, contract, or promise in writing shall be brought within fifteen years after the cause thereof accrued.

HISTORY: GC § 11221; RS § 4980; S&C 948; 51 v 57, § 13:129 v 13 (176). Eff 7-1-62.

(A-27) Ohio Revised Code

§ 2305.07 Contract not in writing.

Except as provided in section 1302.98 of the Revised Code, an action upon a contract not in writing, express or implied, or upon a liability created by statute other than a forfeiture or penalty, shall be brought within six years after the cause thereof accrued.

HISTORY: GC § 11222; RS § 4981; S&C 948; 51 v 57, § 14; 129 v 13(176). Eff. 7-1-62.

(A-28) Ohio Revised Code

[TORTS]

§ 2305.09 Four years; certain torts.

An action for any of the following causes shall be brought within four years after the cause thereof accrued:

(A) For trespassing upon real property;

(B) For the recovery of personal property, or for taking or detaining it;

(C) For relief on the ground of fraud;

(D) For an injury to the rights of the plaintiff not arising on contract nor enumerated in sections 2305.10 to 2305.12, inclusive, 2305.14 and 1304.29 of the Revised Code.

If the action is for trespassing under ground or injury to mines, or for the wrongful taking of personal property, the causes thereof shall not accrue until the wrongdoer is discovered; nor, if it is for fraud, until the fraud is discovered.

HISTORY: GC § 11224; RS § 4982; S&S 541; S&C 948; 51 v 57, § 15; 64 v 145; 81 v 210; 112 v 237; 129 v 13 (1977). Eff 7-1-62.

(A-29) Ohio Revised Code

§ 2305.10 Bodily injury or injury to personal property.

An action for bodily injury or injuring personal property shall be brought within two years after the cause thereof arose.

For purposes of this section, a cause of action for bodily injury caused by exposure to asbestos or to chromium

in any of its chemical forms arises upon the date on which the plaintiff is informed by competent medical authority that he has been injured by such exposure, or upon the date on which, by the exercise of reasonable diligence, he should have become aware that he had been injured by the exposure, whichever date occurs first.

HISTORY: GC § 11224-1; 112 v 237; 138 v H 716. Eff 6-12-80.

Ohio Revised Code
(as amended 5-31-84)

§ 2305.10 Bodily injury or injury to personal property.

An action for bodily injury or injuring personal property shall be brought within two years after the cause thereof arose.

For purposes of this section, a cause of action for bodily injury caused by exposure to asbestos or to chromium in any of its chemical forms arises upon the date on which the plaintiff is informed by competent medical authority that he has been injured by such exposure, or upon the date on which, by the exercise of reasonable diligence, he should have become aware that he had been injured by the exposure, whichever date occurs first.

For purposes of this section, a cause of action for bodily injury incurred by a veteran through exposure to chemical defoliants or herbicides or other causative agents, including agent orange, arises upon the date on which the plaintiff is informed by competent medical authority that he has been injured by such exposure.

As used in this section, "agent orange," "causative agent," and "veteran" have the same meanings as in section 5903.21 of the Revised Code.

For purposes of this section, a cause of action for bodily injury which may be caused by exposure to diethylstilbestrol or other nonsteroidal synthetic estrogens, including exposure before birth, arises upon the date on which the plaintiff learns from a licensed physician that he has an injury which may be related to such exposure, or upon the date on which by the exercise of reasonable diligence he should have become aware that he has an injury which may be related to such exposure, whichever date occrus first.

HISTORY: 139 v S 406 (Eff 8-26-82); 140 v H 72. Eff 5-31-84.

(A-30) Ohio Revised Code

[LIBEL, ASSAULT, MALPRACTICE, ETC.]

§ 2305.11 [Time limitations for bringing certain actions; definitions.]

(A) An action for libel, slander, assault, battery, malicious prosecution, false imprisonment, or malpractice, including an action for malpractice against a physician, podiatrist, or a hospital, or upon a statute for a penalty or forfeiture, shall be brought within one year after the cause thereof accrued, provided that an action by an employee for the payment of unpaid minimum wages, unpaid overtime compensation, or liquidated damages by reason of the nonpayment of minimum wages or overtime compensation, shall be brought within two years after the cause thereof accrued.

If a written notice, prior to the expiration of time contained in this division, is given to any person in a medical claim that an individual is presently considering bringing an action against that person relating to professional services provided to that individual, then an action by that individual against that person may be commenced at any time within one hundred eighty days after that notice is given.

(B) In no event shall any medical claim against a physician, podiatrist, or a hospital be brought more than four years after the act or omission constituting the alleged malpractice occurred. The limitations in this section for filing such a malpractice action against a physician, podiatrist, or hospital apply to all persons regardless of legal disability and notwithstanding section 2305.16 of the Revised Code, provided that a minor who has not attained his tenth birthday shall have until his fourteenth birthday in which to file an action for malpractice against a physician or hospital.

(C) A civil action for nonconsensual abortion pursuant to section 2919.12 of the Revised Code must be commenced within one year after the abortion.

(A-31)

(D) As used in this section:

(1) "Hospital" includes any person, corporation, association, board, or authority responsible for the operation of any hospital licensed or registered in the state, including without limitation those which are owned or operated by the state, political subdivisions, any person, corpora-

tion, or any combination thereof. Such term further includes any person, corporation, association, board, entity, or authority responsible for the operation of any clinic that employs a full-time staff of physicians practicing in more than one recognized medical specialty and rendering advice, diagnosis, care and treatment to individuals. It does not include any hospital operated by the government of the United States or any branch thereof.

(2) "Physician" means all persons who are licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board.

(3) "Medical claim" means any claim asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person.

(4) "Podiatrist" means all persons who are licensed to practice podiatric medicine and surgery by the state medical board.

HISTORY: GC § 11225; RS § 4983; S&C 949; 51 v 57, § 16; 91 v 299; 120 v 646; 122 v 374; 135 v H 989 (Eff 9-16-74); 136 v H 682 (Eff 7-28-75); 136 v H 1426. Eff 7-1-76.

(A-32) Ohio Revised Code
(as amended 9-26-84)

[LIBEL, ASSAULT, MALPRACTICE, ETC.]

§ 2305.11 [Time limitations for bringing certain actions; definitions.]

(A) An action for libel, slander, malicious prosecution, false imprisonment, or malpractice, including an ac-

tion for malpractice against a physician, podiatrist, hospital, or dentist, or upon a statute for a penalty or forfeiture, shall be brought within one year after the cause thereof accrued, provided that an action by an employee for the payment of unpaid minimum wages, unpaid overtime compensation, or liquidated damages by reason of the nonpayment of minimum wages or overtime compensation, shall be brought within two years after the cause thereof accrued.

If a written notice, prior to the expiration of time contained in this division, is given to any person in a medical claim that an individual is presently considering bringing an action against that person relating to professional services provided to that individual, then an action by that individual against that person may be commenced at any time within one hundred eighty days after that notice is given.

(B) In no event shall any medical claim against a physician, podiatrist, or a hospital or a dental claim against a dentist be brought more than four years after the act or omission constituting the alleged malpractice occurred. The limitations in this section for filing such a malpractice action against a physician, podiatrist, hospital, or dentist apply to all persons regardless of legal disability and notwithstanding section 2305.16 of the Revised Code, provided that a minor who has not attained his tenth birthday shall have until his fourteenth birthday in which to file an action for malpractice against a physician or hospital.

(C) A civil action for nonconsensual abortion pursuant to section 2919.12 of the Revised Code shall be commenced within one year after the abortion.

(D) As used in this section:

(1) "Hospital" includes any person, corporation, association, board, or authority responsible for the operation of any hospital licensed or registered in the state, including without limitation those which are owned or operated by the state, political subdivisions, any person, corporation, or any combination thereof. Such term further includes any person, corporation, association, board, entity, or authority responsible for the operation of any clinic that employs a full-time staff of physicians practicing in more than one recognized medical specialty and rendering advice, diagnosis, care and treatment to individuals. It does not include any hospital operated by the government of the United States or any branch thereof.

(2) "Physician" means all persons who are licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board.

(3) "Medical claim" means any claim asserted in any civil action against a physician, podiatrist, or hospital arising out of the diagnosis, care, or treatment of any person.

(4) "Podiatrist" means all persons who are licensed to practice podiatric medicine and surgery by the state medical board.

(5) "Dentist" means all persons licensed to practice dentistry by the state dental board.

(6) "Dental claim" means any claim asserted in any civil action against a dentist arising out of a dental operation or the dental diagnosis, care, or treatment of any person.

HISTORY: 139 v H 243 (Eff 3-15-82); 140 v S 183. Eff 9-26-84.

(A-33) Ohio Revised Code

[§ 2305.11.1] § 2305.111 [Actions for assault or battery.]

An action for assault or battery shall be brought within one year after the cause of the action accrues. For purposes of this section, a cause of action for assault or battery accrues upon the later of the following:

(A) The date on which the alleged assault or battery occurred;

(B) If the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the following dates:

(1) The date on which the plaintiff learns the identity of that person;

(2) The date on which, by the exercise of reasonable diligence, he should have learned the identity of that person.

HISTORY: 140 v S 183. Eff 9-26-84.

(A-34) Ohio Revised Code

§ 2305.14 For other relief.

An action for relief not provided for in sections 2305.04 to 2305.131 [2305.13.1], inclusive, and section

1304.29 of the Revised Code, shall be brought within ten years after the cause thereof accrued. This section does not apply to an action on a judgment rendered in another state or territory.

HISTORY: GC § 11227; RS § 4985; S&C 949; 51 v 57. § 18; 129 v 13(177) (Eff 7-1-62); 130 v 648. Eff 9-10-63.

(A-35) Rules Of The University Faculty

3335-3-35 Chairpersons of departments, directors of schools.

* * *

(B) The duties of the chairperson of a department or the director of a school shall be as follows:

* * *

(10) To see that all faculty, regardless of their assigned location, are offered the departmental privileges and responsibilities appropriate to their rank; and in general to lead in maintaining a high level of morale.

(A-36) Rules Of The University Faculty

3335-5-01 Academic freedom and responsibility.

(A) The Ohio state university endorses full academic freedom as essential to attain the goal of the free search for truth and its free exposition. Academic

freedom and academic responsibility are twin guardians of the integrity of institutions of higher learning. This integrity is essential to the preservation of a free society and explains the willingness of society historically to accept the concept of academic freedom and, in addition, to protect it through the institution of academic tenure.

(B) The principal elements of academic freedom include:

(1) The freedom of the teacher to teach, conduct research and publish research findings;

(2) The freedom of the teacher to discuss in a classroom, in his own manner, any material that is relevant to the subject matter as defined in the course objectives;

(3) The freedom of the teacher to exercise his constitutional rights as a citizen without institutional censorship or discipline;

(4) The freedom to seek changes in academic and institutional policies through lawful and peaceful means.

(C) Academic freedom carries with its correlative academic responsibilities. The principle elements include:

(1) The responsibility of the teacher to meet his defined teaching, research and service obligations;

(2) The responsibility of the teacher to pursue excellence, intellectual honesty, and objectiv-

ity in teaching, in conducting research, and in publishing research findings;

(3) The responsibility of the teacher to encourge students and colleagues to engage in free discussion and inquiry;

(4) The responsibility of the teacher to evaluate student and colleague performance on a scholarly basis;

(5) The responsibility of the teacher to refrain from persistently introducing matters that have no bearing on the subject matter of the course;

(6) The responsibility of the teacher to work with appropriate individuals and bodies to provide optimal conditions conducive to the attainment of the free search for truth and its free exposition;

(7) The responsibility of the teacher to differentiate carefully his official activities as a teacher from his personal activities as a citizen, and to act accordingly. (B/T 9/14/65, B/T 5/2/75)

(A-37) Rules Of The University Faculty

3335-5-03 Election of faculty and staff; tenure.

The board of trustees shall annually appoint the president and all employees of the university not in the classified civil service, subject to the laws of the state of Ohio, and in the case of regular faculty, to the

rights and protection of tenure. Tenure is a commitment by the university and may be earned by all individuals with regular faculty status subject to a probationary period. Regular faculty status is defined in rule 3335-5-19 of the Administrative Code. The protections of tenure and academic freedom extend to all levels of faculty responsibility within the university in accord with rule 3335-5-01 of the Administrative Code and are not restricted to activities identified with specific instructional, research or public service programs. Tenure is lost by formal resignation, by retirement, or may be terminated by reason of proved incompetence or grave misconduct in accordance with rule 3335-5-04 of the Administrative Code, for causes set forth in rule 3335-5-02 of the Administrative Code, or under the conditions of bona fide financial exigency, as specified in rule 3335-5-021 of the Administrative Code.